

**LEON COUNTY BOARD OF COUNTY COMMISSIONERS  
ENERGY PERFORMANCE CONTRACTING PROGRAM**

**INVESTMENT GRADE ENERGY AUDIT AGREEMENT**

This Energy Audit Agreement is entered into on December 13, 2003, by and between Leon County, Florida, a political subdivision of the State (the "Customer") and Progress Energy Solutions, Inc. (PES), located at 17757 U.S. Highway 19 N., Suite 560, Clearwater, Florida 33764 (the "Company"). The Customer and the Company are referred to herein as the "Parties".

**Whereas**, the Customer has issued a Request For Qualifications (RFQ) to identify a Qualified Provider for a guaranteed energy savings contract;

**Whereas**, the Company submitted a response to the RFQ and participated in a competitive evaluation procedure designed to identify a Qualified Provider;

**Whereas**, the Customer has selected the Company as a Qualified Provider;

**Whereas**, the Customer is responsible for the operation, management and maintenance of all County facilities (the "Facility");

**Whereas**, a comprehensive energy use and savings analysis (the "Energy Audit") must be performed at the Facility in order to determine the feasibility of entering into an Energy Performance Contracting Project to provide for the installation and implementation of energy conservation measures (ECMs) at the Facility;

**Whereas**, if the ECMs are demonstrated to be feasible, and if the amount of energy savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facility, the Parties intend to negotiate an Energy Services Agreement (ESA) under which the Company shall design, procure, implement, provide training, maintain and monitor such energy conservation measures at the Facility;

**Therefore**, the Parties agree as follows:

**ARTICLE 1: SCOPE OF COMPREHENSIVE INVESTMENT GRADE ENERGY AUDIT**

The Company will perform the Energy Audit and prepare a detailed engineering and economic report (the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility. The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility as a result of the installation of the recommended energy conservation measures (ECMs). The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility, including accurate marginal cost for each unit of savings at the time the audit is performed; documented material and non-staff labor costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility, compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe the Company's plan for installing or implementing the ECM's in the Facility, including all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating an ESA between the Customer and the Company; however, the Customer shall be under no obligation to negotiate such a contract.

The Company shall perform the following tasks in performing the Energy Audit and preparing the Report:

A. Collect General Facility Information

The Company shall collect general Facility information such as: size, age, construction type, condition and general use of the Facility. The Company shall also collect and summarize Facility utility cost and consumption data for the most recent 36-month period. Company shall evaluate the impact on utility cost and consumption for any energy measures currently being installed or currently contemplated to be installed by the Customer in the Facility which will remain separate from the Energy Services Agreement throughout the duration of the ESA.

Customer shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the Facility for the most current 36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility; and, description of energy management procedures presently utilized. The Customer shall also furnish a record of any energy related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently contemplated to be installed by the Customer in the Facility separate from the Energy Service Agreement throughout the duration of that agreement. The Customer shall also provide copies of drawings, equipment logs and maintenance work orders to the Company insofar as this information is readily available.

B. Inventory Existing Systems and Equipment

Company shall compile an inventory based on a physical inspection of the major electrical and mechanical systems at the Facility, including:

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Kitchen and associated dining room equipment, if applicable
- Exhaust systems and equipment
- Hot water systems
- Electric motors 5 HP and above, transmission and drive systems
- Interior and exterior lighting
- Laundry equipment, if applicable
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Other major energy using systems, if applicable

The inventory shall address the following considerations:

1. The loads, proper sizing, efficiencies or hours of operation for each system; (Where measurement costs, facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived by the Customer).
2. Current operating condition for each system;
3. Remaining useful life of each system;
4. Feasible replacement systems

5. Hazardous materials and other environmental concerns

The Company shall use data loggers and conduct interviews with Facility operation and maintenance staff regarding the Facility's systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

Company shall examine the most recent 36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months. Company shall consult with Facility staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

Company shall estimate loading, usage and/or hours of operation for all major end uses representing more than 5% in aggregate of total Facility consumption including, but not limited to:

- Water
- Lighting
- Heating
- Cooling
- HVAC motors (fans and pumps)
- Plug load
- Kitchen equipment
- Other equipment
- Miscellaneous

Where loading and/or usage are highly uncertain Company shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the Customer. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The annual end use estimated consumption shall be reconciled with the annual Base Year consumption to within 5% for electricity (kWh), fossil fuels and water. The contribution to electric peak demand for each end use shall also be reconciled to within 5% of the annual Base Year peak. The "miscellaneous" category shall not be more than 5%. The purpose of this is to place reasonable limits on potential savings.

D. Develop List of Potential Energy Conservation Measures (ECMs)

The Company shall:

1. Identify and propose potential ECMs for installation or implementation at the Facility(s), including cut sheets on proposed equipment. For non-standard ECMs provide information regarding product site installations.
2. Provide a detailed estimate of the cost, savings and life expectancy of each proposed ECM.
3. Specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs.
4. Provide analysis methodology, supporting calculations and assumptions used to derive baselines (e.g. lighting operating hours) and estimate savings. Provide the existing and proposed air and hot water temperatures, amount of outdoor air ventilation (CFMs) lighting and acoustic levels. Provide copies of the utility tariffs and commodity price histories used in

savings calculations. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.

5. For savings estimates using computer simulations, the Company shall provide access to the program and all inputs and assumptions used, if requested by the Agency.
6. Provide a detailed preliminary savings measurement and verification plan for each proposed ECM.
7. Provide a detailed preliminary commissioning plan for the proposed ECMs.
8. Provide detailed calculations for any rate saving proposals.
9. Provide detailed supporting calculations for any proposed maintenance, material or other operational savings. Describe annual variances in savings from year to year (e.g. lighting, warranties).
10. Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.). Provide emissions reductions data for NOX, CO2 and SO2. Segment emissions data for direct site emissions reductions (e.g. fossil fuels) and indirect emissions reduction data (e.g. electricity/water).
11. For all proposed ECMs, Company shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.

This list shall be compiled and submitted to the Customer within 110 days of the execution of this Energy Audit Agreement.

E. Select Final Recommended ECMs

Company shall, in consultation with the Customer, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility.

F. Cost and Fee Estimates

Company shall provide detailed estimates of costs associated with the installation, implementation and commissioning of each of the ECMs proposed in the Audit including breakouts for non-staff labor, materials, and equipment. In addition, project cost data must be provided in the format included in Attachment B: ESCO Cost Proposal and Cash Flow Analysis.

Company shall also provide estimates of monthly costs associated with sustaining the project performance including breakouts for maintenance fees, monitoring fees, and training fees.

G. Savings Estimates

The Customer has endeavored to provide the Company with sufficient general and specific guidance in this Article 1 to develop the savings estimates for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the Company should seek written guidance from the Customer. The Customer reserves the right to reject items claimed as savings which are not in the Customer's utility budget line or which have been claimed contrary to the guidance given in this agreement or contrary to written guidance given to Company. The Customer also reserves the right to reject Company calculations of savings when it determines that there is another more suitable or preferable means of determining or calculating such savings.

For the purposes completing the Cash Flow Analysis in Attachment B, the following items will be allowed as savings or in the development of savings:

Escalation rates of 3 % for natural gas<sup>1</sup>  
Escalation rates of 3 % for electricity  
Escalation rates of 3 % for oil  
Escalation rates of 3 % for steam  
Escalation rates of 5 % for water  
Escalation rates of 3 % for other fuel type (specify)  
Escalation rates of 3 % for operation and maintenance cost savings  
Escalation rates of 3 % for material/commodity cost savings  
Escalation rates of 3 % for allowable labor savings

The following items will not typically be credited as savings derived from a proposed ECM. The Company may seek exemptions from the Customer on a case-by-case basis. However, the final determination of allowable savings in each case considered shall reside with the Customer:

Customer in-house labor cost  
Customer deferred maintenance cost  
Offset of future Customer capital cost

#### H. Report Format

The Company shall prepare a two-volume report as follows:

Each volume should be submitted using 8 ½ " x 11" sheets of paper and a font size no smaller than 10 point. The pages in each volume should be numbered sequentially, include a Table of Contents and tabbed with the visible titles of corresponding Schedules (Volume 1) or Sections (Volume 2).

Volume 1 of 2 shall include the presentation of information in the following Schedules required for the Energy Services Agreement (ESA) to the extent the information has been developed during the course of performing the audit. Preliminary information and incomplete schedules will be finalized during audit negotiations, prior to execution of the ESA.

#### Schedules

Schedule A	Equipment to be Installed
Schedule B	Energy Savings Guaranty
Schedule C	Compensation to Company
Schedule D	Premises
Schedule E	Calculation of Baseline/Benchmarks
Schedule F	[FINANCING AGREEMENT]
Schedule G	Company Maintenance Responsibilities
Schedule H	Customer Maintenance Responsibilities
Schedule I	Operating Parameters for ECMs/Standards of Comfort & Service
Schedule J	Company Training Responsibilities
Schedule K	Project Installation Schedule
Schedule L	Current and Known Future Capital Projects at the Premises
Schedule M	Pre-Installation Equipment Inventory
Schedule N	Methods of Savings Measurement and Verification
Schedule O	Systems Startup and Commissioning of ECMs
Schedule P	Alternative Dispute Resolution Procedures

<sup>1</sup> It should be noted that the base rate value for each fuel and water unit will not devalue in the event of any rate decrease. The customer reserves the right to impose ceiling rates for fuel escalations.

Schedule Q Insurance and Bonds  
Schedule R Warranties  
Schedule S Proposed Final Project Cost & Proposed Final Project Cash Flow Analysis

Attachment A Sample Construction Process language  
Exhibit I Performance Bond/Construction Bond  
Exhibit II (i) Certification of Acceptance--Energy Audit Report  
Exhibit II (ii) Certification of Acceptance—Energy Conservation Measures  
Exhibit III Equipment Warranties

**Volume 2 of 2** shall include all of the information required in Section D and the Sections below, and presented in the following format:

1. **Executive Summary:** Provide an executive summary which describes the Facility(s), measures evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each recommended measure. Include a summary of the recommended measures and costs using the table format provided below.

	ECM	TOTAL COST	ENERGY COST SAVINGS	SIMPLE PAYBACK
1.				
2.				
3.				
<b>TOTALS</b>				

2. **Measures Not Evaluated:** Include a discussion of measures not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. **Baselines:** Provide a summary of all utility bills, consumption baselines and how they were established, and end use reconciliation with respect to the baselines including a discussion of any unusual characteristics and findings.
4. **ECM Summaries:** Provide detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues. Provide a financial analysis for each proposed ECM (See Section F).
5. **Cost and Savings Estimates:** Conclusions, observations and caveats regarding cost and savings estimates.
6. **Appendices:** Provide thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

I. Submission of the Report

The report as described above is only inclusive of the five major customer facilities as described in Article 3 D. (1) of this agreement (Comprehensive Investment Grade Audits).

Limited investment grade audits and composite audits will be provided for the rest of the customers' facilities as outlined in Article 3 D. (2) & (3) of this agreement (Limited investment grade audits & composite audits).

The Report shall be completed within 110 days. The price for the completed Energy Audit and Report is \$150,519.00.

## ARTICLE 2: ENERGY SERVICES AGREEMENT (ESA)

The Parties intend to negotiate an ESA under which the Company shall design, install and implement energy conservation measures which the Parties have agreed to and provide certain training, maintenance and monitoring services. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such an ESA. The terms and provisions of such an ESA shall be set forth in a separate agreement.

## ARTICLE 3: PAYMENT

- A. Except as otherwise provided in Article 4 herein, within 30 days after PES's submission of the final Energy Audit report, satisfactory in all material respects to the Customer, Customer shall pay PES One Hundred Fifty Thousand Five Hundred Nineteen Dollars (\$150,519) (the "Energy Audit Fee") for performance of the Energy Audit.
- B. If Customer decides to proceed with the Implementation Phase and PES and Customer execute an Energy Services Agreement within 30 days after submission of the Final Energy Audit Report, or such longer period as the parties may mutually agree, the Energy Audit Fee shall be incorporated into PES's Implementation Phase project costs and Customer will not be required to pay the Energy Audit Fee.
- C. Should PES determine at, any time during the Energy Audit, that savings sufficient to fund the implementation of ECMs cannot be attained the Energy Audit will be terminated. In this event this Agreement shall be terminated pursuant to this Article, the Customer shall have no obligation to pay the Energy Audit Fee. However Customer may, in its discretion, elect to have PES complete the Energy Audit and Customer shall pay PES the Energy Audit Fee for said services.

### D. THREE LEVELS OF AUDITS

#### (1) **Comprehensive Investment Grade Audits**

(Detailed Surveys; Complete Modeling; ECM Development; Savings/Costing; Paybacks...1 report each as listed below.....5 reports)

1	1 Report for Courthouse	276,910 SF
2	1 Report for Courthouse Annex Buildings on Calhoun (2)	152,000 SF
3	1 Report for main Library Building	88,230 SF
4	1 Report for Jail	367,490 SF
5	1 Report for Sheriff's Admin and Boot Camp @ Municipal Way (2) two Buildings	55,400 SF

Total SF      940,030 SF      Cost @ \$0.12 per SF

**Audit 1 Cost: \$112,803**



**(2) Limited Investment Grade Audits**

(Detailed Surveys; Hand Calculations; ECM Development; Savings/Costing; Paybacks; Focus on Lights/Water/Trash and other ECMs as apparent opportunities are identified during site visits; Combine Buildings of similar use or location...estimated 12 Reports)

6	1 Report for Health Dept Buildings (3)	@ 3 locations	53,121 SF
7	1 Report for Library Buildings (2)	@ 2 locations	27,066 SF
8	1 Report for Misc (3) Three Buildings > 10,000 SF	@ 3 locations	69,350 SF
	Agriculture Center		13,289 SF
	Growth & Environmental/Tharpe St.		26,061 SF
	Landfill Transfer Station		30,000 SF
9	1 Report for (8) Amtrak Facilities	@ 1 location	22,269 SF
10	1 Report for (3) Facilities Management Buildings	@ 1 location	19,583 SF
11	1 Report for (12) Landfill Facilities	@ 5 locations	15,915 SF
12	1 Report for (3) Mosquito Control Facilities	@ 2 locations	17,817 SF
13	1 Report for (3) Old Bainbridge Rd. Facilities	@ 1 location	5,606 SF
14	1 Report for (7) Parks Facilities	@ 7 locations	7,201 SF
15	1 Report for (10) Public Works/Purchasing Facilities (2280, 2288, & 2290 Miccosukee Rd.)	@ 3 locations	58,091 SF
16	1 Report for (3) Traffic Court Buildings	@ 1 location	20,973 SF
17	1 Report for (4) Dorms	@ 1 location	13,200 SF

Total SF      330,192 SF      Cost @ \$0.10 per SF

**Audit 2 Cost: \$33,019**

**(3) Composite Audits**

(Limited Surveys focusing on Lighting, Occupancy Sensors, Water, Trash and Apparent Mechanical/Envelope opportunities. Limited Surveys, Hand Calculations, Combine ECMs of same type, Savings/Costing/Paybacks....2 composite reports)

18	1 Composite Report for (22) "Other" Owned Facilities	@ 18 locations	36,522 SF
	Bradfordville Comm Ctr		1,158
	Chaires Community Center		1,500
	Coe's Landing		672
	Coe's Landing House		1,150
	Ft. Braden Portable		1,024
	Hall's Landing Highway 20		968
	Library/Ft. Braden		5,500
	Library/Host Building		3,904
	Miccosukee Community Center		3,000
	Public Works Ash Road Hay Barn		3,000
	Rhoden Cove		406
	Sunset Landing		968
	VFD #29 Lake Miccosukee		800
	VFD #30 Chaires/Capitola		800
	VFD #32 Lake Talquin		800
	VFD #33 Lake Talquin		800
	Welcome Center(Tourist Development)		9,400
	Williams Landing/Hwy 20		672

19	1 Composite Report for (19) "Other" Leased Facilities	@ 4 locations	22,187 SF
	Records Storage		6,000
	Lake Jackson Branch Library		6,908
	Ft Braden Community Center		7,079
	Parkway Branch Library		2,200

Total SF 58,709 SF Cost @ \$0.08 per SF

**Audit 3 Cost: \$4,697**

**TOTAL COST OF ALL AUDITS: \$150,519**

#### **ARTICLE 4: TERMINATION**

##### **A. By Company:**

Company may terminate this Agreement prior to the completion of the Energy Audit and Report or subsequent to the scheduled completion of the Energy Audit and Report if:

- (i) it determines that it cannot guarantee a minimum amount of savings in energy costs through the implementation of an energy performance contracting project at the Facility; or
- (ii) it determines that even though it can guarantee a minimum amount of savings in energy costs, that the amount would be insufficient to cover the costs associated with performing the Audit, installing energy conservation measures and related training, maintenance and monitoring services over the specified contract term of 20 years..

In the event Company terminates the Agreement pursuant to Section 4 A (i) or (ii) the Customer shall not be obligated to pay any amount to Company for services performed or expenses incurred by Company in performing the Energy Audit and Report required under this Agreement. Company shall provide the Customer with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. Company will return any documents or information that was provided by the Customer.

Termination under this section shall be effective upon Customer 's receipt of written notification from the Company stating the reason for the termination and all documents which support termination pursuant to 4 A (i) or 4 A (ii) herein.

##### **B. By Customer:**

Customer may terminate this Agreement:

- (i) If the Company fails to complete the Energy Audit and deliver the Report to the Customer by the date established in Article 1 I. above; or fails to obtain a written extension of that date from the Customer. Termination under this subsection B (i) shall be effective upon Company's receipt of written notification from the Customer that the deadline for submission of the Energy Audit and Report has passed. In this event, the Customer shall not be obligated to pay any amount to Company for services performed or expenses incurred by the Company in performing the Energy Audit and preparing the Report required under this Agreement. Company shall provide the Customer with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. Company will return any documents or information that was provided by the Customer.

- (ii) If, prior or subsequent to the completion of the Energy Audit or Report, the Company notifies the Customer in writing that it is unable to guarantee a sufficient level of savings pursuant to subsection 4 A (i) or (ii) above. Termination under this subsection B (ii) shall be effective upon Company's receipt of written notification of termination from the Customer. In this event, the Customer shall not be obligated to pay any amount to Company for services performed or expenses incurred by Company in performing the Energy Audit and preparation of the Report required under this Agreement. Company shall provide the Customer with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. Company will return any documents or information that was provided by the Customer.
- (iii) If, prior or subsequent to the completion of the Energy Audit or Report, the Customer notifies the Company in writing that it has elected to terminate this Agreement and not enter into an ESA, the Customer shall reimburse the Company for either the actual expenses incurred or percent of the Audit and Report completed as of the effective date of the termination, the amount being determined as fair and equitable by the Customer. Termination under this subsection B (iii) shall be effective upon Company's receipt of written notification from the Customer.

Company agrees to provide the Customer with any records of expenses incurred and any preliminary notes, reports or analyses which have been produced or prepared prior to the effective date of the termination. Such documentation shall be used by the Customer to determine the extent of work completed by Company prior to termination and shall become the property of the Customer.

If after completion and acceptance of the Energy Audit, the Customer does not enter into an ESA with the Company within 60 days after written acceptance of the Energy Audit, the Customer agrees to reimburse the Company for the price of the Energy Audit as set forth in Article 1. I. herein. Termination under this subsection B (iii) shall be effective upon Company's receipt of written notification from the Customer. The Energy Audit and Report will become the property of the Customer.

It is clearly understood by both parties hereto that, if the Parties successfully negotiate and execute an Energy Services Agreement, no payment shall be due for the Energy Audit or Report under the terms of this Agreement. This Agreement shall automatically terminate upon the execution of an ESA by Company and the Customer for an energy performance contracting project at the Facility. It is further understood that provisions for payment for the Energy Audit shall be incorporated into the ESA.

## **ARTICLE 5: STANDARD TERMS AND CONDITIONS**

### **SECTION 1. Agreement Term**

The Agreement term shall commence on the date the Agreement is executed by the Customer and end on May 10, 2003, unless earlier terminated pursuant to the provisions of Article 4 hereof. Notwithstanding the foregoing schedule, Company shall adhere to the deadlines set forth in Article 1 regarding the completion and submittal of the list of ECMs and the Report.

### **SECTION 2. Materials, Equipment and Supplies**

The Company shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the Energy Audit and prepare the Report.

### **SECTION 3. Patent and Copyright Responsibility**

The Company agrees that any material or design specified by the Company or supplied by the Company pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the Company shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the Company in the performance of the Energy Audit and preparation of the Report.

#### **SECTION 4. Customer Access to Records**

The Customer shall have the right, throughout the term of this Agreement and for a minimum of \_\_\_\_\_ years following completion of the Agreement, to inspect, audit and obtain copies of all books, records and supporting documents which Company is required to maintain according to the terms of this Agreement.

#### **SECTION 5. Personnel**

All personnel necessary for the effective performance of the Energy Audit shall be employed by Company and its designated subcontractors, shall be qualified to perform the services required under this Agreement, and shall in all respects be subject to the rules and regulations of Company governing staff members and employees. Neither Company, its designated subcontractors, nor its personnel shall be considered to be agents or employees of the Customer.

#### **SECTION 6. Compliance with Applicable Law**

In performance of its obligations pursuant to this Agreement, Company shall comply with all applicable provisions of federal, state and local law. All limits or standards set forth in this Agreement to be observed in the performance required under this Agreement are minimum requirements, and shall not affect the application of more restrictive federal, state or local standards applied to the performance of the Agreement.

#### **SECTION 7. Waivers**

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

#### **SECTION 8. Assignment**

This Agreement may not be assigned by the Company without the prior written consent of the Customer.

#### **SECTION 9. Federal Taxpayer Identification Number and Legal Status Disclosure**

Under penalty of perjury, the Company certifies that 59-6000665 is the Company's correct Federal Taxpayer Identification Number and that the Company is doing business as a Corporation.

**SECTION 10. Governing Law**

This Agreement shall be governed by and construed only in accordance with the laws of the State of Florida.

**SECTION 11. Agreement**

The following documents are incorporated in, and made a part of, this Agreement:

Attachment A – Insurance Requirements for Company (refer to Section 14 of this agreement)

**SECTION 12. Project Management**

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

**For Customer: Mr. Tom Brantley**

**For Company: Mr. John Hobbes**

**SECTION 13. Amendments**

This Agreement and Attachments referenced in Section 11 herein constitute the entire Agreement between the Parties. No amendment hereof shall be effective until and unless reduced to writing and executed by the Parties.

**SECTION 14. Insurance**

The Company shall meet the Customers insurance requirements as provided in Attachment A of this Agreement.

**ARTICLE 6: EXECUTION**

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

COMPANY \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**WITNESSES:**

BY: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

LEON COUNTY, FLORIDA

BY: \_\_\_\_\_

Jane G. Sauls, Chairman  
Board of County Commissioners

**ATTEST:**

Bob Inzer, Clerk of the Court  
Leon County, Florida

BY: \_\_\_\_\_

Approved as to Form:  
Leon County Attorney's Office

BY: \_\_\_\_\_

Herbert W.A. Thiele, Esq.  
County Attorney

## Attachment A

### A. Insurance Requirements for Company

Company shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Company, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in the Company's proposal.

#### 1. Minimum Limits of Insurance

Company shall maintain limits no less than:

- a. General Liability: \$1,000,000 Combined Single Limit for bodily injury and property damage per occurrence with a \$2,000,000 annual aggregate.
- b. Automobile Liability: One Million and 00/100 (\$1,000,000.00) Dollars combined single limit per accident for bodily injury and property damage. *(Non-owned, Hired Car).*
- c. Workers' Compensation Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. *Waiver of Subrogation in lieu of Additional Insured is required.*
- d. Professional Liability Insurance, including errors and omissions: for all services provided under the terms of this agreement with minimum limits of One Million and 00/100 (\$1,000,000.00) Dollars per occurrence; or claims made form with "tail coverage" extending three (3) years beyond the term of the agreement. Proof of "tail coverage" must be submitted with the invoice for final payment. In lieu of "tail coverage", Company may submit annually to the Customer a current Certificate of Insurance proving claims made insurance remains in force throughout the same three (3)-year period.

#### 2. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Customer. At the option of the Customer, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Customer, its officers, officials, employees and volunteers; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

#### 3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- a. General Liability and Automobile Liability Coverages (*Customer is to be named as Additional Insured*).
  1. The Customer, its officers, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of activities performed by or on behalf of the Company, including the insured's general supervision of the Company; products and completed operations of the Company; premises owned, occupied or used by the Company; or automobiles owned, leased, hired or borrowed by the Company. The coverage shall contain no special limitations on the scope of protections afforded the Customer, its officers, officials, employees or volunteers.
  2. The Company's insurance coverage shall be primary insurance as respects the Customer, it officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the Customer, its officers, officials, employees or volunteers

shall be excess of the Company's insurance and shall not contribute with it. Company hereby waives subrogation rights for loss or damage against the Customer.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Customer, its officers, officials, employees or volunteers.

4. The Company's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Companies issuing the insurance policy, or policies, shall have no recourse against the Customer for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of Company.

**b. All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Customer.

**4. Acceptability of Insurers**

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

**5. Verification of Coverage**

Company shall furnish the Customer with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Customer before work commences. The Customer reserves the right to require complete, certified copies of all required insurance policies at any time.

**6. Subcontractors**

Company shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.